

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DEBORAH GANN

Claimant

APPEAL NO: 08A-UI-05872-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JA-HU TRANSPORTATION INC

Employer

**OC: 05/18/08 R: 04
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Deborah Gann (claimant) appealed an unemployment insurance decision dated June 18, 2008, reference 02, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Ja-Hu Transportation, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2008. The claimant participated in the hearing. The employer participated through Robert Zimmerly, President and Dale Zimmerly, Vice-President. Employer's Exhibits One, Two and Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time truck driver from June 19, 2007 through May 20, 2008. The employer issued the claimant a written warning on May 20, 2008 which the claimant refused to sign. The written warning addressed the claimant's failure to do a proper post trip inspection on May 17, 2008 since the employer subsequently found the steer axle brake on the passenger side of her truck was disconnected and not functioning. The employer told the claimant to go home and think about it. The claimant was a no-call/no-show on May 21, 22, and 23, 2008. The employer has a policy which provides that three days of no-call/no-show are considered to be a voluntary quit. The claimant was considered to have voluntarily quit as of May 23, 2008. She called the employer on May 23, 2008 about picking up her check and picked it up later that day. The claimant offered no statements or explanations as to her no-call/no-shows. The employer subsequently received a release from another employer signed by the claimant on May 9, 2008 when she was looking for work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant denies she voluntarily quit and contends she was discharged. However, the evidence demonstrates she was looking for other work two weeks prior to her separation. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or return to work for three consecutive work days. Where an individual mistakenly believes that she is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was deemed a voluntary quit on May 23, 2008 after three days of no-call/no-show. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated June 18, 2008, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs